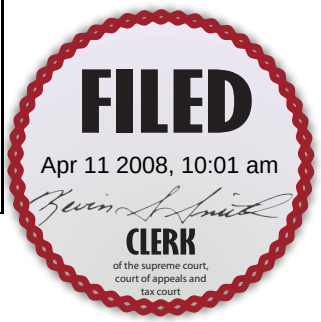

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IN THE
COURT OF APPEALS OF INDIANA

ROBERT OLDHAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0709-CR-500
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0606-MR-106634

April 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Robert Oldham was convicted of Voluntary Manslaughter,[1] as a class A felony, and Carrying a Handgun Without a License,[2] a class A misdemeanor. Upon appeal, Oldham argues that the trial court improperly admitted a recording and transcript of his statement to police, which he claims was taken in violation of his *Miranda* rights.

We affirm.

On the evening of June 9, 2006, Oldham and his second cousin, Antwon Davis, along with four other young men, were "hanging out" in the front yard of Oldham's mother's house when Oldham pulled out a gun and fired three to four shots into the air. *Transcript* at 21. Though this was something Oldham and the others had done before, everyone, except for Davis, ran away from Oldham. As the others ran away, Oldham yelled, "Y'all think it's a game. Ain't nobody playing". *Id*. at 45. Davis then confronted Oldham, saying "Nigger, quit playing. Put that gun down. You not gonna shoot me". *Id*. at 43. Davis added, "I swear on my mama you better not shoot me". *Id*. at 26. Oldham then turned his weapon toward Davis and, from a distance of approximately ten feet, fired two shots. The first shot missed, but the second shot hit Davis in the forehead and the bullet lodged in his brain. Davis fell to the ground and was pronounced dead at the scene.

After Oldham was arrested, he was placed in an interview room and handcuffed to a wall. Shortly thereafter, Detective Jeffery Patterson and Detective Lesia Moore entered the room with a tape recorder. Detective Patterson informed Oldham that they wanted to

[1] Ind. Code Ann. § 35-42-1-3 (West, PREMISE through 2007 1st Regular Sess.).

[2] Ind. Code Ann. § 35-47-2-1 (West, PREMISE through 2007 1st Regular Sess.).

talk about the shooting incident that resulted in Davis's death. He then advised Oldham of his *Miranda* rights, pausing after each to ensure that Oldham understood them. Oldham indicated that he understood each of the rights as read to him, but when asked to sign a written waiver of rights form, Oldham responded with questions. Oldham never signed the written waiver.

During the course of the forty-five-minute interview, Detective Patterson attempted to discuss the incident with Oldham. Numerous times Oldham questioned why he was being detained and repeatedly told Detective Patterson "I ain't got . . . nothin' to say, you know" or some variation thereof. *State's Exhibit 22* at 6. The interview, however, went on uninterrupted. Detective Patterson explained that there were virtually no pauses in the conversation and that Oldham initiated further dialog by asking questions and offering responses. Throughout the entire interview, Oldham denied any involvement in the shooting death of Davis.

On June 12, 2006, the State charged Oldham with murder, a felony, and carrying a handgun without a license, a class A misdemeanor. Prior to trial, Oldham filed a motion to suppress his statement to police arguing that it was not preceded by a voluntary waiver of his *Miranda* rights. The trial court denied the motion after a hearing. A bench trial was held July 16, 2007. During opening statements, Oldham, through counsel, admitted that he shot Davis. Oldham asked the court to find him guilty of reckless homicide. Oldham characterized his denial of the shooting during the interview with Detective Patterson as an understandable lie motivated by fear of the police. At the conclusion of the evidence, the court found as follows:

> The Court has had the opportunity to review the evidence that was submitted and also the testimony by recording that the Court did not have an opportunity to hear during the trial. The defendant through counsel admitted so much as having fired the gun and, therefore, killing the victim, however, the evidence also was very clear from the testimony that even if the defendant had not admitted that through counsel that, in fact, the defendant shot a gun and killed Antwon Davis. The State needed to prove beyond a reasonable doubt that the defendant, in fact, did this knowingly. From the evidence the Court is convinced that due to the closeness of the gun and shooting twice at the defendant [sic] that he did, in fact do this knowingly, however, the Court feels that there is a - - the factor of sudden heat that has appeared here in that the testimony and argument being that no one had ever defied the defendant before when he was shooting his gun in the air. The Court considers that to be mitigating to reduce what would be murder down to voluntary manslaughter. The Court does find the defendant guilty of voluntary manslaughter.

Transcript at 120. The Court subsequently sentenced Oldham to forty years for voluntary manslaughter and to a concurrent term of one year for carrying a handgun without a license.

On appeal, Oldham contends that his statement to police was improperly admitted into evidence. Specifically, Oldham argues that the interview was not preceded by a knowing and voluntary waiver of his *Miranda* rights. Oldham directs us to numerous instances during the interview where he told Detective Patterson that he had "nothin' to say" or some variation thereof and argues that such statements constituted invocations of his right to remain silent. *State's Exhibit 22* at 6. Oldham maintains that his rights were violated when the interview continued despite his repeated invocations.

The burden is upon the State to prove beyond a reasonable doubt that the defendant voluntarily and intelligently waived his *Miranda* rights and that his statement was voluntarily given. *Ringo v. State*, 736 N.E.2d 1209 (Ind. 2000). Once that burden is

met, we will review the trial court's decision to admit the statement for an abuse of discretion. *Id*. We do not reweigh the evidence but instead examine the record for substantial probative evidence of voluntariness. *Id*.

"A waiver of one's *Miranda* rights occurs when the defendant, after being advised of those rights and acknowledging that he understands them, proceeds to make a statement without taking advantage of those rights." *Ringo v. State*, 736 N.E.2d at 1211-12. Thus, an express written or oral waiver is not required to establish that a defendant waived his *Miranda* rights. *Horan v. State*, 682 N.E.2d 502 (Ind. 1997); *Cook v. State*, 544 N.E.2d 1359 (Ind. 1989). In deciding whether *Miranda* rights were voluntarily waived, we consider the totality of the circumstances to ensure that the waiver was not induced by violence, threats, or other improper influences that overcame the defendant's free will. *Ringo v. State*, 736 N.E.2d 1209.

The record demonstrates that during the interview Oldham was fully advised of his rights and that he understood his rights, including his right to remain silent. Although Oldham never signed the waiver of rights form presented to him, he never refused to do so. Upon being presented with a written waiver of rights form, Oldham immediately asked why he was being detained and thereafter continued to engage in an ongoing dialog, without pause, with Detective Patterson. There is no suggestion in the record that Oldham's conversation with Detective Patterson was induced by violence, threats, or other improper influences. Under these circumstances, we conclude that Oldham impliedly waived his right to remain silent. *See Horan v. State*, 682 N.E.2d 502 (finding implied waiver where defendant was fully informed of *Miranda* rights, indicated that he

understood those rights, and yet answered police questions in the absence of evidence of coercion or improper influence); *Cook v. State*, 544 N.E.2d 1359 (finding a valid implied waiver where defendant was orally advised of *Miranda* rights and expressed his understanding of those rights prior to answering questions).

We reject Oldham's claim that his repeated statements to the effect that he had nothing more to say were unequivocal assertions of his right to remain silent. An assertion of *Miranda* rights must be clear and unequivocal. *Clark v. State*, 808 N.E.2d 1183 (Ind. 2004). A defendant must do more than express reluctance to talk to invoke his right to remain silent. *Id*. Whether a defendant has asserted his right to remain silent is a fact-sensitive determination made by considering the defendant's statements as a whole. *Id*.; *Haviland v. State*, 677 N.E.2d 509 (Ind. 1997).

Oldham's various statements to the effect that he had nothing more to say were not emphatic and unambiguous assertions of his right to remain silent. Taken in context, the statements are better understood as part and parcel of Oldham's denial of his involvement in the shooting and an expression that he had nothing further to add to the conversation. Indeed, each expression was followed by immediate questions from Oldham and his further responses, without pause, to Detective Patterson. Oldham's various statements were not express invocations of his right to remain silent. *See Heald v. State*, 492 N.E.2d 671, 676 (Ind. 1986) (holding that defendant's statement "I don't believe I have anything else to add" merely indicated that "she had no further information to convey concerning the particular matter under discussion" and was therefore not sufficiently emphatic to

constitute an invocation of the right to remain silent), *overruled on other grounds by Spradlin v. State*, 569 N.E.2d 948 (Ind. 1991).

Having concluded that Oldham impliedly waived his *Miranda* rights, the trial court properly admitted his statement into evidence.

Judgment affirmed.

MATHIAS, J., and ROBB, J., concur.